

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D- NO.1130-DB OF 2014 (O&M)
DATE OF DECISION : 10th MARCH, 2015**

Harphool Singh

.... Appellant

Versus

Rajdeep Singh and another

.... Respondent

**CORAM : HON'BLE MR. JUSTICE S. S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

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Present : Mr. A.D.S. Jattana, Advocate for the appellant.

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S. S. Saron, J.

The appeal has been filed by appellant-Harphool Singh against the judgment and order dated 12.04.2014 passed by the learned Additional Sessions Judge, Patiala, in pursuance of which Rajdeep Singh (respondent no.1) has been acquitted of the offences for which he was charged i.e. offences punishable under Sections 363, 366-A, 376, 457 and 506 of the Indian Penal Code ('IPC' - for short); besides, Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' - for short).

The FIR (Ex.PD) in the case has been registered on the statement of the appellant/complainant-Harphool Singh. It is alleged by the complainant that he was resident of village Barsat, Police Station Patiala aged 45 years. He did agriculture work. He as usual like every other day along with his family on 20.05.2013 was sleeping in the courtyard of his house. The time would be about 1.00 a.m. when he got up to ease himself. Then he saw that his daughter (prosecutrix) aged

about 15-16 years was not on her bed. He then woke up his wife Harjinder Kaur and they searched for his daughter in the house. She was not found in the house and the door of the house was locked from inside. The complainant then called his brother Kesar Singh and they searched for his daughter here and there in the village. However, she was not found. As it was very dark at that time they came back and sat at their house and waited there. The electricity lights went off at about 4.00 a.m. and at that time in the darkness, the daughter of the complainant came from through the staircase of the vacant adjoining house of Ram Lal and through the staircase on the top 'kotha' of his own house. She came and laid herself on her bed. During this time, the electricity lights again came on and they saw that his daughter was lying on her bed. They asked her as to where had she gone but she did not give any reply but was quite subdued and afraid. On their repeatedly asking her, she did not disclose anything. She only said that they would kill all of them. After making several efforts, the daughter of the complainant disclosed to her mother Harjinder Kaur and then she disclosed everything to the complainant at his home by sitting there.

It was disclosed that Rajdeep Singh (respondent No.1) son of Daljit Singh resident of village Barsat came to his daughter from the adjoining vacant house of Ram Lal. He came by entering the house by climbing the stairs on the top 'kotha' of the complainant and entered the courtyard of his house. He held out threats to the daughter of the complainant and by climbing through the staircase of the vacant house of

Ram Lal and by getting down took her to the vacant house of Harpal Singh son of Hardev Singh resident of village Barsat.

There he took the daughter of the complainant and forcibly threw her on an empty bed lying in a room of the house. Against her wishes and with force he opened her 'salwar' and by undressing her underwear and 'salwar', besides, by holding out threats, he committed rape with her. When his daughter was writhing in pain then Rajdeep Singh threatened her that if she raised an alarm, then he would kill her and her family. It was stated that Kulwinder Singh son of Geja Singh and Kirandeep Singh son of late Rampal Singh residents of village Barsat were also standing outside the house. In the morning at about 4.00 a.m. when Rajdeep Singh came to leave the daughter of the complainant at her home, then Kulwinder Singh and Kirandeep Singh above said cut the electricity switch from the transformer and switched off the lights. In the darkness Rajdeep Singh left the prosecutrix at her house through the staircase of the vacant house of Ram Lal from the 'kotha' on the top of the house of the complainant. Then his daughter came back to his house. The above persons by holding out threats to his daughter and Rajdeep Singh in conspiracy with others had forcibly committed rape on his daughter. The complainant was going to the police station to lodge a report that ASI Pawan Kumar Police Station Pasiona (PW12) met him at the T-point Dhabalan. The complainant got his statement recorded. He asked for legal action to be taken against the above said persons. Harphool Singh complainant signed below his statement in 'Gurmukhi',

which was endorsed by the prosecutrix and attested by ASI Pawan Kumar, Police Station, Pasiana on 24.05.2013.

Police proceedings were recorded by ASI Pawan Kumar (PW-12) on 24.05.2013 to the effect that he along with HC Karamjit Singh, HC Prem Kumar, Constable Mehtab Singh, PC Avtar Singh, HC Manjinder Singh, Lady Constable Amandeep Kaur were patrolling in the area in a private vehicle looking out for suspects. At the T-point Dhabalan Harphool Singh complainant along with his daughter met him. Harphool Singh got his above statement recorded which after recording was read over to him. He after hearing his statement and accepting it as correct signed in 'Gurmukhi' below it. The statement was attested by his daughter (prosecutrix), which was attested by ASI Pawan Kumar. From the statement that was recorded, a case for the offences under Sections 363, 366-A, 376 and 506 IPC were found to be made out. Therefore, the statement for registration of a case against the accused for the aforesaid offences was sent to the police station through Constable Mehtab Singh. File number of the case was asked to be informed after registering the case. The special reports were asked to be sent. The In charge Control Room and the Senior Officers were asked to be informed. ASI Pawan Kumar along with his companion police officials was busy with the investigation.

At the police station, case FIR No.64 dated 24.05.2013 for the offences under Sections 363, 366-A, 376 and 506 IPC was registered by ASI Daljit Singh, SHO Police Station Pasiana.

The prosecutrix along with Lady Constable Amandeep Kaur and HC Manjinder Singh was sent to Rajendra Hospital, Patiala for getting her medico legal examination conducted. ASI Pawan Kumar (PW-12) along with complainant Harphool Singh reached the spot and prepared the site plan (Ex. PD) of the place of occurrence with correct marginal notes. Site plan of the place where rape of the prosecutrix was committed, was also prepared. Statement of the prosecutrix was also recorded.

Thereafter Ranjit Singh son of Gurnam Singh of village Dakala on 26.05.2013 produced Rajdeep Singh (respondent No.1) before ASI Pawan Kumar. Rajdeep Singh (respondent No.1) had made an extra judicial confession before the said Ranjit Singh. Rajdeep Singh was arrested vide arrest memo Ex. PW-11/B. His personal search was conducted and a personal search memo Ex.PW11/A was prepared which was signed by Ranjit Singh and HC Karamjit Singh. The statements of the witnesses were recorded during the course of investigation. An application Ex.PF was moved on 27.05.2013 before the Medical Officer, Civil Dispensary, Model Town, Patiala for the medical examination of Rajdeep Singh in order to ascertain whether he was fit to have sexual intercourse. The medical examination was conducted. Dr. Jaideep Bhalla vide his opinion Ex. PF/1 declared that Rajdeep Singh-respondent was fit to have sexual intercourse.

Rajdeep Singh (respondent No.1), during the course of investigation on 28.05.2013 on police remand, produced a mobile phone of Samsung 3850 along with a SIM card and memory card from an

‘almirah’ of his house, which was taken in police possession vide recovery memo Ex. PG. It was signed by Head Constable Prem Chand and was attested by ASI Pawan Kumar (PW-12). The medical record of the victim was collected from Rajendra Hospital, Patiala where the victim was medico legally examined. The case property was deposited with MHC. On the completion of investigation, police report (‘challan’) was filed in the Court of the learned Judicial Magistrate Ist Class, Patiala against Rajdeep Singh (respondent) by Inspector Puneet Singh.

The learned Magistrate observed that the accused Rajdeep Singh had been ‘challaned’ by the police for the commission of offences punishable under Sections 363, 366-A, 376 and 506 IPC; besides, under Section 4 of the POCSO Act. The offence punishable under Section 376 IPC, it was observed, was exclusively triable by the Court of Sessions. Accordingly the case was committed to the Court of learned Sessions Judge, Patiala. The accused was directed to be produced in the said Court.

The case was received by entrustment in the Court of the learned Additional Sessions Judge to whom it was assigned. The learned Additional Sessions Judge in terms of order dated 12.09.2013 after hearing the Additional Public Prosecutor for the State and learned counsel for the accused and perusing the record framed charges against Rajdeep Singh (respondent) on the allegation that on the intervening night of 20/21.05.2013 in the area of village Barsat, he committed lurking house trespass by entering into the house of the complainant for the purpose of kidnapping the daughter of the complainant and by doing so he committed

an offence punishable under Section 457 IPC. Besides, on the said date, time and place, he kidnapped the prosecutrix a minor from the lawful guardianship of her parents and thereby committed an offence punishable under Section 363 IPC. He on the above said date, time and place, kidnapped the minor girl (prosecutrix) with the intent that she would be forced to illicit intercourse with him and perform marriage with him, thereby, committed an offence punishable under Section 366-A IPC. The respondent, it is alleged, on the said date, time and place, committed rape upon the prosecutrix without her consent and thereby committed an offence punishable under Section 376 IPC, or in the alternative he committed penetrative assault on the person of the prosecutrix a minor by taking her away and keeping her in illegal custody and thereby he had committed an offence punishable under Section 4 of the POCSO Act. Lastly on the said date, time and place he criminally intimidated the prosecutrix by giving her threats to eliminate and thereby he committed an offence punishable under Section 506 IPC. The contents of the charges were read over and understood by Rajdeep Singh (respondent). He pleaded not guilty to the same and claimed trial.

The prosecution in order to establish its case, examined as many as 13 witnesses; besides, tendered documents in evidence.

The statement of the respondent in terms of Section 313 of the Code of Criminal Procedure ('Cr.P.C.' - for short) was recorded and the substance of the evidence appearing against him was put to him. In his defence he stated that he was innocent and he had not committed any offence. He had been falsely implicated in the case on account of earlier

litigation pending between his family and the family of the complainant.

He did not produce any defence evidence.

The learned trial Court after considering the evidence and material on record was of the considered opinion that the prosecution had failed to prove its case against the accused beyond shadow of reasonable doubt. As a result thereof, the accused was given the benefit of doubt and was acquitted of the charges framed against him.

The complainant aggrieved against the order of acquittal has filed the appeal against Rajdeep Singh and the State of Punjab for setting aside the judgment and order passed by the learned trial Court.

Learned counsel for the appellant during the course of hearing in view of the deposition of the prosecutrix that no crime had been committed against her and that the respondent was her boy friend; besides, Dr. Satinder Pal Kaur, (PW-4) who medically examined the prosecutrix, did not state that there was possibility of rape being committed and also in view of the FSL report (Ex. PW-4/B) which found no spermatozoa to be detected in the contents of exhibits I, II and III i.e. Vaginal Swab I, Vaginal Swab II and Pubic Hair respectively did not press the case for the offences other than the offence under Section 366-A IPC. He laid considerable emphasis on the fact that even though the prosecutrix (PW7) during the trial resiled from her statement made before the police, the respondent would still be liable for the offence under Section 366-A IPC as she was less than 16 years of age on the date of occurrence. A reference has been made to the 'Matriculation Examination

Certificate with Detailed Marks Sheet' (Ex.PW-3/B), which mentions her date of birth as 11.09.1997.

We have given our thoughtful consideration to the matter.

It may be noticed that the prosecutrix appeared in the present case as PW-7 and she inter alia stated that she knew Rajdeep Singh (respondent) and he was her co-villager. It is stated by her (prosecutrix) that Rajdeep Singh (respondent) had been chasing her and he used to say that she should talk with him. On those occasions when he asked her to speak to him, she was not speaking with him and she used to ignore him. He used to stop her in the street and say that she should speak to him but she was not doing so. The accused then started holding out threats to her and had been saying that she should speak with him failing which he would eliminate her and her family members. Despite the said threats by the accused, she did not talk with him. The accused on 20.05.2013 at about 4.00 p.m. had stopped the prosecutrix in the street and he told her that on the said day she should meet him in the night hours. The prosecutrix, however, refused and she went to her house. She did not disclose the aforesaid misdeeds of the respondent to her parents due to fear.

The prosecutrix further stated that the accused (Rajdeep Singh) did not do anything with her at any point of time and he was her boy friend. It is stated that the accused had not committed any crime with her. At the said stage the learned Additional Public Prosecutor for the State requested that the witness was suppressing the truth and was resiling from her earlier statement before the police so he be permitted to get the

witness declared hostile and be allowed to cross-examine her. The request was considered by the learned trial Court and it was allowed. The learned Additional Public Prosecutor cross examined the prosecutrix at considerable length. However, nothing could be brought out from her cross-examination, which would in any manner incriminate Rajdeep Singh (respondent) and favour the prosecution case.

The contention of the learned counsel for the appellant that the prosecutrix was a minor and the respondent is, therefore, liable for the offence under Section 366-A IPC may be considered. Section 366-A IPC reads as follows:

Section 366A. "Procuration of minor girl.-"

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

A perusal of the above shows that whoever by any means whatsoever induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that she knowing that it was likely that she would be, forced or seduced to illicit intercourse with another person shall be punishable with

imprisonment which may extend to ten years and shall also be liable to fine. Three ingredients, therefore, that are required to make out an offence under Section 366-A IPC are that the minor girl below the age of 18 years was induced by the accused; she was induced to go from one place to another from her lawful custody and she was induced with the intent that she may be or knowing that it would be likely that she would be forced to illicit intercourse with another person. As such it is not only inducing a girl under 18 years to go from any place to do an act but there is also to be the intention or knowledge that such girl would be forced or seduced to illicit intercourse with another person. The requirement of the offence under this Section is that the prosecution is required to prove that the accused intended that the minor girl would be forced or seduced to illicit intercourse with someone other than himself or that the accused knew that it was likely that she would be so forced or seduced.

In the present case we have already noticed that the prosecutrix clearly stated that Rajdeep Singh (respondent) had not committed any crime with her and that he was her boy friend. The date of birth of prosecutrix in the 'Matriculation Examination Certificate with Detailed Marks Sheet' issued by the Punjab School Education Board on 11.06.2012 (Ex.PW-3/B) mentions her date of birth as 11.09.1997.

The prosecution examined Dr. Naresh Kumar, Senior Resident, Department of Radio Diagnosis, Rajendra Hospital, Patiala (PW-5). He conducted ultrasound examination of the patient (prosecutrix) on 25.05.2013. He conducted the ultrasound of pelvic organs and nothing abnormal was found. His report was (Ex-PW5/A) and ultrasound film

was (PW-5/B). These were tendered in examination. In cross examination he stated that he had not conducted any test in order to determine the age of the patient. It is stated as wrong to suggest that he had given a false opinion in this regard.

The prosecution also examined Dr. Hemal Grover, Junior Resident, Department of Radio Diagnosis, Rajendra Hospital, Patiala (PW6). He conducted x-ray examination of the prosecutrix on 24.05.2013. The x-ray examination was conducted in order to know her bone age. He conducted various x-rays and after examining her, he opined that her bone age was 17 to 19 years. His report Ex.PW6/A, it is stated was correct and according to the original brought by him in the Court. X-ray films were Ex.P1 and Ex.P2. In cross examination it is stated that the difference of age could be two years on either side according to Modi's Jurisprudence. It is stated as wrong to suggest that he had given a false report. The report Ex.PW6/A of Dr. Hemal Grover (PW6) is to the effect that in his opinion the Radiological age of the prosecutrix was between 17 to 19 years.

It is to be noticed that there is nothing to show that the prosecutrix was induced to go from any place or do any act with the intent that she may be or knowing that it was likely that she would be forced or seduced to illicit intercourse with another person. The prosecutrix stated that Rajdeep Singh (respondent) was her boy friend and he did not commit any crime with her. Besides, the radiological age of the prosecutrix was between 17 to 19 years and even if it is to be taken as less than 18 years, it would be quite inconsequential and insignificant as the ingredients of the offence under Section 366-A IPC are not made out.

Even otherwise the prosecutrix had reached the age of discretion. In S. Varadarajan v. State of Madras, AIR 1965 SC 942, a college going girl on the verge of majority had telephoned the accused and then met him. She went along with him to the Sub Registrar's Office for registering her marriage agreement. There was no threat or inducement on the part of the accused. The girl rather insisted on marrying the accused. It was said that when the girl, who though a minor had attained the age of discretion and was on the verge of attaining majority and was a senior college student goes from the house of the relative of the father where she was kept and herself telephones the accused to meet her at a certain place. Then goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub Registrar's office where they get an agreement to marry registered and there was no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it was clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes, it was said could by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is, the father. The fact of her accompanying the accused all along, it was held, was quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him wherever he went was of course implicit. Under the said circumstances, it was held that no inference could be drawn that the accused was guilty of taking away the girl out of the keeping of her father and she had willingly

accompanied him. The law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him.

In the present case as well, the girl had attained the age of discretion and she had gone with the accused respondent on her own inasmuch as she categorically stated that he was her boy friend. Then she returned back through the staircase of the vacant adjoining house. It is when she was questioned as to where she had gone that she stated that threats were held out to her.

The respondent in his defence has taken a stand that there was litigation between the families of the parties. The learned trial Court has referred to the deposition of Harphool Singh wherein he admitted that various litigations were decided and pending between them and Rajdeep Singh. It was also mentioned that the mother of the prosecutrix, to whom the prosecutrix had disclosed the entire alleged occurrence, had not been examined by the prosecution and neither was she cited as a witness in the list of witnesses attached with the report under Section 173 Cr.P.C.

Therefore, we are of the view that the learned trial Court has correctly appreciated the evidence and material on record. It has rightly been acquitted respondent No.1 by taking a possible and a reasonable view. The law is well settled that once the learned trial Court has taken a possible view in acquitting an accused, the same is not liable to be lightly interfered with even if another view was possible. In the facts and circumstances, no ground is made out to interfere with the findings reached at by the learned trial Court.

Consequently, there is no merit in this appeal and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

10th March, 2015
'raj'/A.kaundal

(SURINDER GUPTA)
JUDGE